

Seacoast Stormwater Coalition of New Hampshire

Dover-Durham-Exeter-Greenland-North Hampton-Portsmouth-Rochester-Rollinsford-Rye-Seabrook-Somersworth-UNH

February 20, 2009

Ms. Thelma Murphy
USEPA – (CIP)
One Congress Street, Suite 1100
Boston, MA 02114

RE: Comments on the Draft Small MS4 General Stormwater Permit

Dear Ms. Murphy:

The member communities of the Seacoast Stormwater Coalition of New Hampshire want to thank you for the opportunity to provide questions and comments relative to the new Draft Phase II Small MS4 Stormwater Permit dated December 23, 2008 (here to referred to as Draft Permit). To assist with meeting EPA stormwater management regulations, most of the regulated municipalities and institutions in the New Hampshire Seacoast formed a regional stormwater coalition. Coalition members include 12 active representatives from municipal departments of public works responsible for stormwater system management. The coalition chairs are the Durham Town Engineer, David Cedarholm and New Hampshire Department of Environmental Services (DES) Watershed Outreach Coordinator Barbara McMillan. Meetings are held monthly. Each member contributes important information on all aspects of stormwater system management and invaluable personal experience from their own individual municipality's perspective.

Since 2003, the communities of the Seacoast Stormwater Coalition of New Hampshire have risen to the challenges imposed by the recently expired Phase II Small MS4 Stormwater Permit. Each community worked hard to develop effective stormwater pollution prevention plans, draft and adopt ordinances, develop illicit discharge detection and elimination (IDDE) programs, train workers, educate local residents, and improve water quality by implementing the programs. The Coalition worked as a team to secure grant monies to jointly produce public outreach and educational materials and guidance documents that are currently used statewide. The Coalition has hosted and facilitated a number of statewide informational presentation meetings to reach out to other area Coalitions. The financial resources to accomplish the above tasks were significant but, the members agree that these actions made sense and were worthwhile. Our annual reports now reside in online EPA files as permanent records of jobs well done. There has been a strong sense that cooperatively working together toward a common goal of improving water quality through better stormwater management has created a successful partnership between the Coalition communities, EPA, and the DES. Prior to release of the Draft Permit on December 23, 2008, this cooperative partnership had progressed for five years as the Seacoast Stormwater Coalition member communities worked diligently to comply with the regulations with absolutely no feedback (positive or negative) from the EPA, with few exceptions.

The tone of the language in the Draft Permit is a dramatic deviation from the partnership atmosphere that was established between EPA and the small MS4 communities in the first permit cycle. The previous permit succeeded in helping municipalities and regulators work together toward a common useful goal. The NH Seacoast Stormwater Coalition member communities are sincerely concerned that the goodwill

and partnership that was established with the EPA and NHDES over the previous five years has the potential of turning adversarial due to the difficulties imposed by the Draft Permit.

The Coalition considers many of the requirements in the Draft Permit to be unreasonable and the timelines are unrealistic. The increased responsibilities of fact finding, water quality evaluations, and administrative record keeping and reporting will require forming entirely new municipal programs and departmental divisions which will take significant resources away from actually implementing and expanding the programs put in place during the first permit cycle. The limited environmental benefit relative to the increase in cost of implementing the new programs is questionable. Some proposed regulations will require new enabling legislation to provide unprecedented local authority before they can be legally implemented. Municipalities in New Hampshire do not currently have the authority to regulate the older existing private entities to the extent implied by the Draft Permit. Even after the State of New Hampshire develops and enacts the needed enabling legislation, communities that adopted stormwater ordinances under the first permit cycle will still need to revise and re-adopt new more restrictive ordinances to comply. This suggests a lack of understanding on the EPA's part of what has already been accomplished and what is even possible given the existing State statutes and administrative rules. It is especially important during difficult economic times that any new program is built upon realistic implementable goals that focus on producing predictable and accurate results with the most cost-effective methods.

Difficult Timing

The financial impact from the Draft Permit requirements on municipal budgets will be extremely burdensome and the schedule is overly ambitious. The timing is especially difficult in light of the economic situation that communities in New Hampshire and all across the country face today, with calls for zero percent municipal budget increases and tax caps. Municipal budgets are established at least 6 to 8 months prior to the end of each fiscal year, and the costs of complying with just the 1st and 2nd year of the Draft Permit requires preparation and planning on the order of 12 to 18 months to make adequate provisions and be included in the municipal budget process. General compliance with the Draft Permit requirements should be forgiven for at least 2 years and at least 5 years for full compliance.

Unrealistic Deadlines

The requirements for the updated Stormwater Pollution Prevention Plans (SWPPs) are much more involved than the previous permit, and the deadlines to develop and implement them are unrealistic. Due to the extreme complexity of the permit requirements, the timeline for developing SWPPs and fully implementing them should be delayed at least another 2 to 4 years. There needs to be greater flexibility incorporated into the permit's language pertaining to the SWPPs relative to the frequency of catch basin cleaning and monitoring of outfalls that gives consideration to knowledge gained in previous years about what is necessary and cost effective.

Undefined Evaluations

The Draft Permit requires municipalities to conduct undefined evaluations of discharges into impaired water bodies where Total Maximum Daily Load (TMDL) studies are not yet performed. Will the EPA

define the scope and limit of the evaluations, or does the EPA expect the State of New Hampshire to define the criteria through new administrative rules? Without clearly defined criteria in which the evaluations are to be based, the results will be of limited use. It is necessary that the criteria and list of parameters be reasonable, purposeful, and conscious of cost.

Public Education & Outreach

The new detailed requirements in the Draft Permit relative to public education and outreach are beyond the capabilities of the vast majority of small MS4 communities, short of contracting with a professional communications or advertising firm. To develop and manage a focused education and outreach program and track its progress, as required by the Draft Permit, will take further valuable resources away from other programs that are proven effective. Providing reports on methods and evaluations of the education and outreach effectiveness (including conducting surveys) represents unnecessary micromanagement of activities that are unlikely to produce cost-effective results. National educational institutions report questionable success rates when evaluating the true effectiveness of education and outreach programs involving passive participation even with the use of voluntary surveys. A national stormwater education outreach program structured after an existing program such as the water conservation educational outreach program associated with EPA WaterSense would be more appropriate and less costly than requiring all communities to “go it alone”. The Draft Permit should encourage cooperative regional or local education outreach programs coordinated by coalitions such as the Seacoast Stormwater Coalition. The proof that the Coalition’s cooperative approach to education and outreach on stormwater issues is effective comes in the form of genuine public interest and support, which is not necessarily measureable.

In closing, it is obvious that the Draft Permit will require significantly more Federal resources for the EPA to effectively administer than was required by the previous permit. The additional reporting required by municipalities and institutions to be submitted to the EPA represents extremely costly services on both the part of the EPA and the regulated community. This raises serious questions about how carefully the EPA considered the internal implications of these additional efforts and to what degree is it expected to produce positive external results, and at what cost?

The member communities of the Seacoast Stormwater Coalition of New Hampshire appreciate your time to review these comments and hope that, in a spirit of cooperation, you will address our concerns in a revised draft permit. We look forward to receiving your response.

Please forward your response directly to the Coalition Co-Chair David Cedarholm:


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Respectfully,

The member representatives of the Seacoast Stormwater Coalition of New Hampshire:



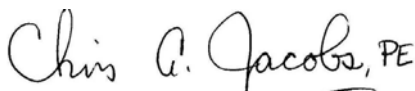
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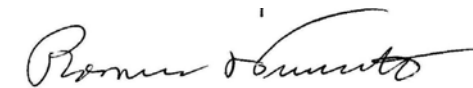
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cc: Thomas S. Burack, Commissioner of NHDES